

**FILED**

**NOT FOR PUBLICATION**

**NOV 28 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT N. LUM, a.k.a. Bobby Lum,

Defendant - Appellant.

No. 05-10835

D.C. No. CR-03-00560-1-SOM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Susan Oki Mollway, District Judge, Presiding

Submitted November 13, 2006\*\*  
Honolulu, Hawaii

Before: TROTT, WARDLAW, and W. FLETCHER, Circuit Judges.

Robert Lum ("Lum") pled guilty to conspiring to distribute more than fifty grams of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Lum now appeals the district court's denial of his motion to withdraw the guilty plea

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

**EXHIBIT "B"**

prior to sentencing. Lum alleges he demonstrated a “fair and just reason” for withdrawal because his counsel misinformed him about the government’s willingness to ask the court for a downward departure. See United States v. Davis, 428 F.3d 802, 805 (9th Cir. 2005); Fed. R. Crim. P. 11(d)(2)(B). Because the district court (1) did not err in finding that Lum’s testimony lacked credibility, and (2) rested its decision to deny withdrawal of Lum’s plea on an accurate view of the law, we affirm the district court’s denial of Lum’s motion to withdraw his guilty plea.

**AFFIRMED**